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**Revised Notice of Violations and Intent to File Suit under the Clean Water Act**

**To Whom It May Concern:**

Levitt Law, APC ("Levitt Law") represents Our Clean Waters ("OCW"), a non-profit corporation organized under the laws of the State of California. This letter is to give notice that Levitt Law, on behalf of OCW, intends to file a civil action against Aluminum Precision Products, Inc. ("Aluminum Precision Products") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at the Aluminum Precision Products Facility located at 1001 McWane Boulevard, Oxnard, CA 93033 (the "Facility").

OCW is concerned with the environmental health of the Oxnard Drain No.3, Mugu Lagoon, and the Pacific Ocean, on behalf of the public that uses and enjoys said Water Bodies, its inflows, outflows, and other waters of the affected Watershed. The public's use and enjoyment of these waters is negatively affected by the pollutants discharged from Aluminum Precision Products' ongoing illegal activities. Additionally, OCW acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all

individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Aluminum Precision Products' unlawful discharge of pollutants from the Facility into conveyance channels that discharge into Oxnard Drain No. 3, then into the Mugu Lagoon, and ultimately to the Pacific Ocean. The facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit").<sup>1</sup> The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As appropriate, OCW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." Investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(b)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act Section 505(b), this Notice of Violations and Intent to File Suit provides notice to Aluminum Precision Products of the violations that have occurred and which continue to occur at the Facility. Consequently, OCW hereby places Aluminum Precision Products on formal notice, that after the expiration of sixty (60) days from the date of this Notice of Violations and the Intent to Sue, OCW intends to file suit in federal court against Aluminum Precision Products under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and the General Permit. The violations are described more fully below.

During the 60-day notice period, OCW is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Aluminum Precision Products contact OCW's attorneys at Levitt Law within the next twenty (20) days so these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

## **I. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The Aluminum Precision Products ("Aluminum Precision Products") Facility is located at 1001 McWane Boulevard, Oxnard, CA 93033. The site comprises approximately 15 acres of land, approximately 0.5 miles from the Pacific Ocean. Aluminum Precision Products performs precision forging of aluminum parts and components for aerospace and automotive applications and certifies that the Facility is classified under Standard Industrial Classification ("SIC") code 3463 (Nonferrous Forgings). Aluminum Precision Products conducts the following industrial activities at the Facility: die forging, trimming, burnishing, etching, welding, washing of molds, loading and unloading, hazardous materials storage, miscellaneous outdoor storage (i.e. aluminum raw materials, dirty aluminum shavings and scrap, surplus equipment), and waste

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<sup>1</sup> On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial General Permit except for purposes of enforcement actions brought pursuant to the prior permit.

water treatment. At a minimum, Aluminum Precision Products utilizes the following industrial materials at the Facility: aluminum raw materials, dirty aluminum scrap and shavings, clean aluminum scrap, aluminum billets, filter cake, oily water, recovered oil, hydraulic oil, die lubricants, grease, machine oil, alkaline agent and cleaner, nitric acid, sodium hydroxide, sulfuric acid, and ammonium hydroxide. Possible pollutants from the Facility include: pH, Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), Aluminum ("Al"), Iron ("Fe"), Zinc ("Zn"), Nitrate + Nitrite Nitrogen (N+N), Copper ("Cu"), Nickel ("Ni"), Total Dissolved Solids ("TDS"), and other pollutants potentially related to industrial activities. Storm water from the Facility discharges, via the local storm sewer system and/or surface runoff indirectly into the Oxnard Drain No. 3, then into the Mugu Lagoon, and ultimately to the Pacific Ocean.

## **B. The Affected Water**

The Oxnard Drain No. 3, the Mugu Lagoon, and the Pacific Ocean are waters of the United States. The CWA requires that water bodies such as the Oxnard Drain No. 3 and its inflows and outflows meet water quality objectives that protect specific "beneficial uses." Beneficial use designations were not specifically identified in the Los Angeles and Ventura Counties Basin Plan for Oxnard Drain No. 3. Therefore, the downstream segment's (Mugu Lagoon) beneficial uses apply. The Water Quality Control Plan for the Los Angeles Region Water Quality Control Board (LAWQCB, 1994) designates the following beneficial uses applicable to Oxnard Drain No. 3: preservation of biological habitats; commercial and sport fishing; estuarine habitat; marine habitat; migration of aquatic organisms; navigation; rare threatened, or endangered species; water contact and non-contact recreation; shellfish harvesting; spawning, reproduction, and/or early development; wetland habitat; and wildlife habitat. Furthermore, the Mugu Lagoon is one of the few remaining significant saltwater wetlands in southern California, and borders on an Area of Special Biological Significance (ASBS) and supports a great diversity of wildlife including several endangered species.

Additionally, the public and members of OCW use the Pacific Ocean to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies.

Contaminated storm water from the Facility adversely affects the water quality of the Oxnard Drain No. 3, the Mugu Lagoon, and the Pacific Ocean; and impairs and threatens the beneficial uses and ecosystems of these waters, which includes habitats for threatened or endangered species.

## **II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311(a)). Further, it is unlawful to discharge in violation of the terms and conditions of an NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial General Permit in order to lawfully discharge.

Aluminum Precision Products has submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the Industrial General Permit since at least 2002 (WDID Number 4 56I017709). However, information available to OCW indicates that storm

water discharges from the Facility have violated the terms of the Industrial General Permit, and have been violating, and continue to violate, the CWA.

Pursuant to Section I.A.8 of the Industrial General Permit, a facility operator must comply with all conditions of the Industrial General Permit. (Industrial General Permit, §I.A.8. [dischargers must “comply with all requirements, provisions, limitations, and prohibitions in this General Permit.”]). Failure to comply with the Industrial General Permit is a Clean Water Act violation. (Industrial General Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial General Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial General Permit renewal application. As an enrollee, Aluminum Precision Products has a duty to comply with the Industrial General Permit and is subject to all of the provisions therein.

#### **A. Discharges in Excess of BAT/BCT Levels**

The Effluent Limitations of the Industrial General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants<sup>2</sup> and best conventional pollutant control technology (“BCT”) for conventional pollutants. Industrial General Permit § I(D)(32), II(D)(2); Previous Industrial General Permit, Order Part B(3). Specifically, the Permit “requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards.” (Industrial General Permit §I(D)(32); see also §V.A.). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmark levels are reflected as Numeric Action Level (NAL) values in the current Industrial General Permit (also known as Benchmark values in the Previous Industrial General Permit). These levels are set at the maximum pollutant concentration present to determine if an industrial Facility is employing BAT and BCT. (See Attachment 1 of this Notice for applicable Benchmark Values).<sup>3</sup>

Additionally, the Previous Industrial General Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. See Previous Industrial General Permit § VIII. The Previous Industrial General Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial General Permit. *Id.* Aluminum Precision Products falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the previous Industrial General Permit during its effective period.

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<sup>2</sup> BAT is defined at 40 C.F.R. § 437.1 et seq. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>3</sup> The Benchmark values are part of the EPA's Multi-Sector General Permit (“MSGP”). See 73 Fed. Reg 56,572 (Sept 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharged From Industrial Activities).

Aluminum Precision Products' self-reporting of industrial storm water discharges shows a pattern of exceedances of Benchmarks and NAL values, especially as it pertains to the parameters Al, Fe, N+N, and Zn. This pattern of exceedances of Benchmarks and NAL values indicate that Aluminum Precision Products has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit and Previous Industrial General Permit. Self monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9<sup>th</sup> Cir. 1988).

OCW alleges and notifies Aluminum Precision Products that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for Al, Fe, N+N, and Zn. Aluminum Precision Products' ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values, and BAT and BCT based levels of control, also demonstrate that Aluminum Precision Products has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Aluminum Precision Products' failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day Aluminum Precision Products discharges without meeting BAT/BCT. OCW alleges that Aluminum Precision Products has discharged storm water containing excessive levels of pollutants from the Facility to the Oxnard Drain No. 3 and Mugu Lagoon during significant local rain events over 0.1 inches in the last five (5) years (Attachment 2).<sup>4</sup> Every significant rain event that has occurred in the last five (5) years represents a discharge of polluted storm water run-off into the Oxnard Drain No. 3 and Mugu Lagoon. Aluminum Precision Products is subject to civil penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

Furthermore, OCW puts Aluminum Precision Products on notice that the 2015 Permit Effluent Limitation V (A) is a separate, independent requirement with which Aluminum Precision Products must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Aluminum Precision Products' obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.

The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in the 2015 Permit are not, in and of themselves, violations of the 2015 Permit. 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

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<sup>4</sup> The Benchmark values are part of the EPAs Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

Even if Aluminum Precision Products submits an Exceedance Response Action Report pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing. Because the Aluminum Precision Products Facility's discharge violations are ongoing, each storm water discharge from the Facility constitutes a violation of Effluent Limitation V.A. of the New Permit. The repeated and significant exceedances of water quality standards and Benchmark and Numeric Action Levels demonstrate that the Aluminum Precision Products Facility Owners and/or Operators have failed and continue to fail to develop and/or implement required BMPs at the Facility that achieve compliance with the BAT/BCT standards of the Industrial General Permit.

#### **B. Discharges Impairing Receiving Waters**

The CWA and Industrial General Permit's Discharge Prohibitions disallow storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (2). The Industrial General Permit also prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. See Industrial General Permit, Section VI (b-c); Previous Industrial General Permit Order, Part C (1). Receiving Water Limitations of the Industrial General Permit prohibit storm water discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial General Permit, Section VI (a); Previous Industrial General Permit Order, Part C (2). Applicable WQS are set forth in the California Toxic Rule ("CTR")<sup>5</sup> and Water Quality Control Plan – Los Angeles Region (Region 4): Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (the "Basin Plan").<sup>6</sup> Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan.

The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000). See [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml) to reference the Region 4 Basin Plan. The beneficial uses of the Oxnard Drain No.3 and the Mugu Lagoon include preservation of biological habitats; commercial and sport fishing; estuarine habitat; marine habitat; migration of aquatic organisms; navigation; rare threatened, or endangered species; water contact and non-contact recreation; shellfish harvesting; spawning, reproduction, and/or early development; wetland habitat; and wildlife habitat. The non-contact water recreation use is defined as "uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan establishes WQS for all Inland Surface Waters, including the Affected Water Body Watershed, which contain, but are not limited, to the following standards:

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<sup>5</sup> The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

<sup>6</sup> The Basin Plan is published by the Los Angeles Regional Water Quality Control Board and can be accessed at <http://www.waterboards.ca.gov>

- A narrative toxicity standard which states that “all waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38.
- A narrative oil and grease standard which states that “waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29.
- That “waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37.
- That “the pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35.
- That “surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect designated beneficial use.” *Id.* at 3-24.
- That “waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26.
- That “waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25.
- That “waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38.
- That “waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37.

OCW alleges that Aluminum Precision Products’ storm water discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial General Permit and the WQS set forth in the Basin Plan and CTR, and is clearly in violation of the CWA. These allegations are based on Aluminum Precision Products’ self-reported data submitted to the Los Angeles Regional Water Quality Control Board. The sampling results indicate that Aluminum Precision Products’ discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS (See Attachment 1).

OCW alleges that each day that Aluminum Precision Products has discharged storm water from the Facility, Aluminum Precision Products’ storm water has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Oxnard Drain No. 3, Mugu Lagoon, and the affected Watershed. OCW alleges that Aluminum Precision Products has discharged storm water exceeding Receiving Water Limitations and/or WQS from the Facility to the Oxnard Drain No. 3, Mugu Lagoon, and the Affected Watershed during significant local rain events over 0.1 inches in the last five (5) years (See Attachment 2). Each

discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial General Permit and the CWA. Aluminum Precision Products is subject to penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

**C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**

The Industrial General Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). See Industrial General Permit, Section X (B); Previous Industrial General Permit, Part A (I) (a) and Provision E (2). The Industrial General Permit also requires dischargers to make all necessary revisions to the existing SWPPP promptly. See Industrial General Permit, Section X (B); Previous Industrial General Permit Order, Part E (2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Aluminum Precision Products pollutant sources, a description of the BMPs that will reduce or prevent pollutants in storm water discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a Facility manager determines that the SWPPP is in violation of any requirements of the Industrial General Permit. See Industrial General Permit, Section X (A); Previous Industrial General Permit, Part A.

Based on information available to OCW, Aluminum Precision Products has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements stated in Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit. For Example, Aluminum Precision Products' SWPPP does not include and/or Aluminum Precision Products has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A (8) of the Industrial General Permit as evidenced by the data in Attachment 1. The Facility's storm water samples have consistently exceeded EPA Benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Aluminum Precision Products has failed to sufficiently update and revise the Facility's SWPPP. The facility's SWPPP has therefore never achieved the Industrial General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Additionally, the SWPPP did not include the sample location identified as "Main (center) driveway into manufacturing area" until Revision 2 dated 1/1/2017; and the site map does not clearly identify sample locations, where run-on flows onto the site, or nearby water bodies.

Accordingly, Aluminum Precision Products has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit, and Aluminum Precision Products will continue to be in violation every day until it develops and implements an adequate SWPPP. Aluminum Precision Products is subject to penalties for each violation of the Industrial General Permit and the CWA occurring within the past five (5) years.

#### **D. Failure to Monitor and to Develop and Implement an Adequate Monitoring and Reporting Program**

The Industrial Storm Water Permit requires Facility operators to develop and implement a Monitoring Implementation Program ("MIP"). See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B (I) and Order, Part E (3). The Industrial General Permit requires that the MIP ensures that the Facility adequately detects and measures its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit. *Id.* Facility operators must ensure that their MIP practices reduce or prevent pollutants in storm water and authorized non-storm water discharges as well as evaluate and revise their practices to meet changing conditions at the Facility. *Id.* This may include revising the SWPPP as required by Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit.

The MIP must measure the effectiveness of BMPs used to prevent or reduce pollutants in storm water and authorized non-storm water discharges, and Facility operators must revise the MIP whenever appropriate. See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B. The Industrial General Permit requires Facility operators to visually observe and collect samples of storm water discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the Facility's monitoring program will satisfy these objectives. *Id.*

The Previous Industrial General Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at the facility (1997 Industrial General Permit, § B (5)). The current Industrial General Permit now mandates that facility operators sample four (rather than two) storm water discharges from all drainage locations over the course of the reporting year (2015 Industrial General Permit, §§ XI(B)(2), (3)). Despite these requirements, Aluminum Precision Products submitted the Annual Report for the 2015-2016 reporting period with analysis data for only two (2) storm events, rather than the required four (4); and neither of the events sampled included data from all of the facility's SWPPP designated sample locations. The sample location identified as "Main (center) driveway into manufacturing area" was not sampled during either event. Also, the submitted Annual Reports for the 2012-2013, 2013-2014, and 2014-2015 reporting years only include sample data for one (1) storm event each reporting year, rather than the required two (2). Additionally, for 2012-2013, 2013-2014, and 2014-2015 there was no sample data provided for sample location "Main (center) driveway into manufacturing area" and Aluminum was not analyzed for at all during these reporting periods despite Aluminum being a known potential pollutant at the Facility. The 2/3/2017 sample also did not include data from sample location "Main (center) driveway into manufacturing area." Aluminum Precision Products has failed to adequately explain why there is a lack of required sampling data.

The sampling location identified as "Main (center) driveway into manufacturing area" was sampled for the first time during the 16-17 reporting year. The self-reported sample data for this location demonstrates numerous results for Aluminum in excess of the NAL values in the Industrial General Permit; including one result from the 1/19/17 rain event over 10 times the allowable level of 0.75 mg/L. Furthermore, Aluminum was not analyzed for prior to the 2015-2016 reporting year, despite Aluminum parts and components being the primary materials used by the facility as the core of its industrial activities. The fact that Aluminum Precision

Products did not sample from the "Main (center) Driveway" location prior to the 16-17 reporting year, and did not analyze for Aluminum prior to the 2015-2016 reporting year; directly affected Aluminum Precision Products' requirement to adequately detect and measure its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit; and to adequately measure the effectiveness of BMPs in place at the Facility.

Aluminum Precision Products has been operating the Facility with an inadequately developed and/or inadequately implemented MIP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial General Permit. For example, the data in Attachment 1 indicates that Aluminum Precision Products' monitoring program has not ensured that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial General Permit as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in storm water as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. Similarly, the data in Attachment 1 indicates that Aluminum Precision Products' monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B.

As a result of Aluminum Precision Products' failure to adequately develop and/or implement an adequate MIP at the Facility, Aluminum Precision Products has been in daily and continuous violation of the Industrial Storm Water Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Aluminum Precision Products will continue to be in violation of the monitoring and reporting requirement each day that Aluminum Precision Products fails to adequately develop and/or implement an effective MIP at the Facility. Aluminum Precision Products is subject to penalties for each violation of the Industrial General Permit and the CWA occurring for the last five (5) years.

The Aluminum Precision Products owners and/or Operators had numerous opportunities to sample but failed to do so, and failed to monitor all locations and all constituents as required. They are thus subject to penalties in accordance with the Industrial General Permit – punishable by a minimum of \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial General Permit, §XXI.Q.1).

#### **E. Failure to Perform Annual Comprehensive Site Compliance Evaluations**

The 1997 Permit requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to OCW indicates Aluminum Precision Products has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Aluminum Precision Products has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

OCW puts Aluminum Precision Products on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and CWA. Aluminum Precision Products is in ongoing violation of the General Permit every day that the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Aluminum Precision Products is subject to civil penalties for all violations of the CWA occurring over the past 5 years.

#### **F. Failure to Comply with Level 1 Exceedance Response Action Requirements**

As of July 1, 2016, Aluminum Precision Products was in Level 1 status for Aluminum based on NAL exceedances during the 2015-2016 reporting period. See 2015 Permit, XII.C. Aluminum Precision Products completed a Level 1 ERA evaluation and submitted a Level 1 ERA Report to SMARTS, as required by Section XII.C.1-2. Although Aluminum Precision Products' Level 1 ERA Report includes additional BMPs to implement at the Facility, it fails to identify additional BMPs "necessary to prevent future NAL exceedances at the Facility and to comply with the requirements of [the 2015 Permit]," as evidenced by the fact that sampling results from the 2016-2017 reporting period showed continued exceedances of Aluminum. See 2015 Permit, Section XII.C.1.c, XII.C.2.a.ii.

Accordingly, Aluminum Precision Product has failed and continues to fail to conduct an adequate Level 1 status evaluation and an adequate Level 1 ERA Report that complies with the 2015 Permit. As such, Aluminum Precision Product is in daily violation of the 2015 Permit. Every day Aluminum Precision Product conducts operations at the Facility without an adequate Level 1 status evaluation and/or an adequate Level 1 ERA Report, as required by the 2015 Permit, is a separate and distinct violation of the 2015 Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311 (a). Aluminum Precision Product has been in daily and continuous violation of the 2015 Permit's Level 1 status ERA requirements every day since at least July 1, 2016. These violations are ongoing. Aluminum Precision Product is subject to civil penalties for all violations of the Clean Water Act occurring since July 1, 2016.

#### **G. Unpermitted Discharges**

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by an NPDES Permit issued pursuant to Section 402 of the CWA. See 33 U.S.C. § 1311 (a), 1342. Aluminum Precision Products sought coverage for the Facility under the Industrial General Permit, which states that any discharge from an industrial Facility not in compliance with the Industrial General Permit must be either eliminated

or permitted by a separate NPDES permit. Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (1). Because Aluminum Precision Products has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial General Permit, each and every discharge from the Facility described herein, not in compliance with the Industrial General Permit, has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301 (a) of the CWA, 33 U.S.C. § 131 I(a).

### III. PERSON RESPONSIBLE FOR THE VIOLATIONS

Aluminum Precision Products, Inc. ("Aluminum Precision Products") is responsible for the violations at the Facility located at 1001 McWane Boulevard, Oxnard, CA 93033 as described above.

### IV. NAME AND ADDRESS OF NOTICING PARTY

#### OUR CLEAN WATERS

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### V. LEGAL COUNSEL

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### VI. REMEDIES

As stated previously, OCW intends, at the close of the 60-day notice period or thereafter, to file suit under CWA section 505(a) against Aluminum Precision Products for the above-referenced violations. OCW will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, OCW will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Aluminum Precision Products in this action. **The CWA imposes civil penalty liability of up to \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015, plus attorneys' fees and costs (33 U.S.C. § 1319(d); 40 C.F.R. § 19.4).** OCW will seek to recover such penalties, restitution, attorneys' fees, experts' fees, and costs in accordance with CWA section

505(d), 33 U.S.C. § 1365(d). It should be noted that the statute of limitations is five (5) years for citizen enforcement actions brought pursuant to the federal Clean Water Act, bringing potential liabilities for the last five (5) years. Furthermore, actions are allowable under prior expired permits within the five (5) year period. (See *Illinois v. Outboard Marine, Inc.*, (7<sup>th</sup> Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired Permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-854 [holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]).

As noted above, OCW and its Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

*Scott L. Levitt*

Scott L. Levitt, Esq.

## ATTACHMENT 1

### 1. Self-Reported Sampling Conducted by Aluminum Precision Products Demonstrating Non-compliance with BAT/BCT

Date of Sample	Discharge Point	Parameter	EPA Benchmark Value / NAL Value	Sample Value
1/5/2016	West	Nitrite Plus Nitrate (as N)	0.68 mg/L	0.767 mg/L
1/5/2016	West	Iron	1.0 mg/L	1.91 mg/L
1/5/2016	West	Aluminum	0.75 mg/L	1.69 mg/L
1/5/2016	East	Nitrite Plus Nitrate (as N)	0.68 mg/L	1.12 mg/L
1/5/2016	East	Iron	1.0 mg/L	1.87 mg/L
1/5/2016	East	Aluminum	0.75 mg/L	1.15 mg/L
3/11/2016	West	Aluminum	0.75 mg/L	0.832 mg/L
3/11/2016	East	Iron	1.0 mg/L	4.23 mg/l
3/11/2016	East	Aluminum	0.75 mg/L	3.42 mg/L
1/4/2017	East	Zinc	0.26 mg/L	0.344 mg/L
1/4/2017	West	Nitrite Plus Nitrate (as N)	0.68 mg/L	0.846 mg/L
1/4/2017	Center Driveway	Aluminum	0.75 mg/L	1.18 mg/L
1/4/2017	Center Driveway	Iron	1.0 mg/L	1.24 mg/L
1/4/2017	Center Driveway	Nitrite Plus Nitrate (as N)	0.68 mg/L	0.776 mg/L
1/19/2017	West	Aluminum	0.75 mg/L	0.944 mg/L
1/19/2017	West	Iron	1.0 mg/L	1.23 mg/L
1/19/2017	West	Nitrite Plus Nitrate (as N)	0.68 mg/L	0.745 mg/L
1/19/2017	Center Driveway	Aluminum	0.75 mg/L	7.61 mg/L
1/19/2017	Center Driveway	Copper	0.0332 mg/L	0.0534 mg/L
1/19/2017	Center Driveway	Zinc	0.26 mg/L	0.421 mg/L
2/3/2017	East	Nitrite Plus Nitrate (as N)	0.68 mg/L	0.707 mg/L
2/3/2017	West	Nitrite Plus Nitrate (as N)	0.68 mg/L	1.1 mg/L
2/6/2017	West	Aluminum	0.75 mg/L	0.789 mg/L
2/6/2017	Center Driveway	Aluminum	0.75 mg/L	0.892 mg/L
3/21/17	West	Nitrite Plus Nitrate (as N)	0.68 mg/L	1.8 mg/L

The above referenced discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Industrial General Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Industrial General Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Industrial General Permit.

## ATTACHMENT 2

Rain Dates, Aluminum Precision Products, Oxnard, CA

Data from Oxnard Airport Weather Station KOXR (Approx. 4.5 miles from Aluminum Precision Products)

7-14-12 to 7-14-17

Days with Precipitation over 0.1 inch

11/28/2012	12/12/2014	11/26/2016
11/29/2012	12/17/2014	12/15/2016
11/30/2012	1/10/2015	12/16/2016
12/1/2012	1/11/2015	12/22/2016
12/2/2012	1/26/2015	12/23/2016
12/23/2012	2/7/2015	12/30/2016
12/24/2012	2/22/2015	1/4/2017
12/29/2012	2/28/2015	1/5/2017
1/6/2013	3/1/2015	1/7/2017
1/24/2013	4/7/2015	1/9/2017
1/25/2013	5/14/2015	1/11/2017
1/26/2013	6/9/2015	1/12/2017
2/19/2013	7/26/2015	1/18/2017
3/7/2013	9/15/2015	1/19/2017
3/8/2013	10/4/2015	1/20/2017
3/31/2013	12/19/2015	1/21/2017
5/6/2013	1/5/2016	1/22/2017
11/20/2013	1/6/2017	1/23/2017
11/21/2013	1/7/2017	2/3/2017
11/29/2013	1/19/2016	2/6/2017
12/7/2013	1/31/2016	2/7/2017
2/6/2014	2/17/2016	2/10/2017
2/26/2014	2/18/2016	2/17/2017
2/27/2014	3/5/2016	2/18/2017
2/28/2014	3/6/2016	2/19/2017
3/1/2014	3/7/2016	2/20/2017
3/31/2014	3/11/2016	2/21/2017
10/31/2014	4/9/2016	2/26/2017
12/2/2014	10/28/2016	3/21/2017
12/3/2014	10/30/2016	4/7/2017
12/11/2014	11/20/2016	5/7/2017